

Memorandum

245.1067

To : Mr. Glenn A. Bystrom
Deputy Director
Sales and Use Tax Department
MIC:43

Date: May 29, 1996

From : Gary J. Jugum
Assistant Chief Counsel

Subject: Sports Energy Drinks

Please disregard my memoranda of February 24 and March 17, 1995, in regard to the referenced subject matter.

Upon further analysis, it is apparent that sports energy drinks are nontaxable as a product category, without regard to wording such as "carbohydrate" or "energy," which may appear on their labels. While these words may be related to "caloric intake," these products are not "prescribed or designed. . .to increase or decrease. . .caloric intake" within the meaning of that phrase as it is used in Regulation 1602, paragraph (a)(5).

The products in question are little more than sugar and water and not supplemental or adjunct items to remedy gross dietary deficiencies or gross mineral depletions. These products are marketed as responsive to transitory nutritional depletion resulting from strenuous exercise. In short, these products are nothing more than beverages. The entire product category is nontaxable as a food product, without regard to insubstantial differences between products.

GJJ:sr

cc: Mr. Dennis Fox - MIC:92
Ms. Susan Wengel - MIC:85
Mr. David H. Levine
Mr. Ronald L. Dick
Mr. John L. Waid
Ms. Sophia Chung